

examiner has not followed the factual enquiries required by Graham v John Deere Co. The examiner has not correctly determined the content of the prior art, has failed to ascertain the differences between the prior art and the claims in issue and has not resolved the level of ordinary skill in this art. Further, in order to demonstrate that the combination was an obvious one at the time the invention was made, the examiner must provide some showing that the cited references suggest the desirability and thus the obviousness of making the combination. Further, it is well accepted law that the references must be reviewed without the benefit of hindsight, particularly the hindsight which is afforded by the benefit of having reviewed the Applicant's disclosure.

The Applicant's review of Yananton and Sacherer provide no indication whatsoever that either of the references make any suggestion for the combinations performed by the examiner nor any motive or teaching for making the combination in the way that the examiner has carried it out. The only suggestion for combining these entirely unrelated references comes only from the examiner who has the benefit of hindsight and the Applicant's disclosure.

The Sacherer reference pertains to a plastic container for test strips and makes no reference whatsoever to possible utility or benefit from combination with cat litter boxes. The Yananton reference pertains to a diagnostic system which is used in conjunction with a litter box but contains no suggestion, motive or teaching that it can be combined in any way or in any sense with the kind of container disclosed in the Sacherer reference.

In order for the examiner to prevail, the examiner must show that each and every integer of the claims as disclosed in at least one of Yananton or Sacherer. The Applicant's claim 1 clearly recites a disposable plastic body "having affixed to an exterior surface, a sealed envelope contain a test strip". Neither Yananton nor Sacherer disclose an exterior surface to which is attached a sealed envelope. This is a basic factual matter and it is urged that the examiner strongly consider the fact that neither reference has a sealed envelope attached to an exterior surface. Further, neither reference discloses the envelope affixed to an exterior surface, neither reference discloses a test

strip located within that envelope. Thus, on this ground alone the references and arguments provided by the examiner are inadequate for meeting the legal burden imposed by 35 USC 103 and the factual enquiries required by law under *Graham v John Deere Co.*

The examiner observes that Yananton teaches a container with a disposable plastic body wherein the body has a rim with a sealing lip and having on an exterior surface, a test strip. The examiner is incorrect with her interpretation of Yananton. The Applicant disagrees that Yananton teaches a “sealing lip” in the conventional interpretation of this term. Neither can Yananton be seen as having affixed to an exterior surface, a test strip on the same body that has the “sealing lip”.

The examiner contains that “it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention to prevent moisture exposure to the test strips prior to use to ensure reliability of the analytical determination as taught by Sacherer”. First, it would appear as though the examiner’s conclusions are driven primarily by hindsight. Further, the examiner has made a conclusion as to obviousness and level of ordinary skill in the art without providing any evidence whatsoever of the level of ordinary skill in this or what would have been considered obvious at the time the invention was made. Certainly there is no documentary evidence in any of the cited references for the proposition that the combination suggested by the examiner would have been an obvious one.

Regarding claim 2, the examiner contends that Yananton teaches that the body has raised portions form on a bottom of a container. Strictly speaking, this is not true. In the Yananton specification items 52 are referred to as “channels” or “any type of depressions” (column 11, line 40). The raised portions taught and claimed by the Application operate in exactly the opposition way as the alleged features referred to by the examiner. The raised portions taught and claimed by the Application shed urine away from them to a collecting bottom portion of the Applicant’s container. In Yananton, the channels 52 collect urine and apparently have no function whatsoever in the mating with or co-operating with features formed on the bottom of a cat litter

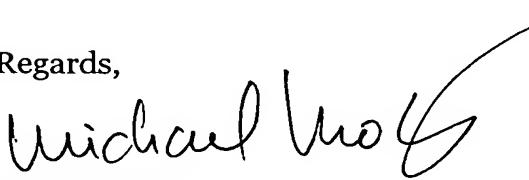
box. This form of co-operation is first taught by the Applicant and is not seen in any other prior art teaching or device. Another important distinction is that that the channels in Yananton (52) serve to increase the internal volume of the tray in the sense that in addition to the normal depth of litter, litter is also required to fill the channels 52. In the Applicant's invention, the raised portion has decreased the volume of litter which is required in a given container. Thus the Applicant teaches away from Yananton in ways which are not depicted in any prior art reference.

The examiner suggests that Yananton teaches the pre-packaging of cat litter with regard to her rejection of claim 4. The Applicant notes that Yananton teaches that "the litter is used in the common manner as the upper most layer in a litter box". The common manner of using litter is not to pre-package it. (see Yananton, column 3, lines 27-28). Thus, Yananton does not depart from the conventional ways of using cat litter in the way that are first disclosed and claimed by the Applicant.

In conclusion, the examiner has not met the legal or factual burdens required to sustain the rejection of the Applicant's claims. The examiner is urged to consider the Applicant's claims in a way which has regard for each and every limitation which is recited in the claims. The examiner is urged not to combine references except in ways which are explicitly taught, motivated or suggested by the references themselves. Importantly, the examiner must acknowledge and act on the basis that no reference produced by her teaches the combination of the Applicant's claim 1.

Favourable reconsideration is requested.

Regards,



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What is claimed is:

1. (Currently Amended) A container for urine collection and testing, comprising:
a disposable plastic body, the body having a rim with a sealing lip and having
affixed to an exterior surface, a sealed envelope containing a test strip.
2. (Currently Amended) The container of claim 1, wherein:
the body further comprises raised portions formed on a bottom of the
container, the raised portions adapted to mate with cooperating features
formed on the bottom of a cat litter box.
3. The container of claim 1, further comprising:
a lid which seals the container.
4. (Currently Amended) The container of claim-43, further comprising:
a pre-packaged charge of cat litter in the container.
5. (Currently Amended) The container of claim 1, further comprising:
a label affixed to an exterior surface, the lid-label having printed on it
information pertaining to the interpretation of the test strip.
6. The container of claim 1, wherein:
the body has sides which taper for nesting.
7. The container of claim 1, wherein:
the envelope is non-transparent.
8. The container of claim 1, wherein:
the test strip is a urine test strip.

9. The container of claim 2, wherein:
the raised portions are two in number.

10. The container of claim 2, wherein:
the raised portions are parallel mounds with tapered sides.

11. The container of claim 10, wherein:
the raised portions have flat tops.

12. (Currently Amended) A container for urine collection and testing, comprising:
a disposable plastic body with tapered sides, the body having a rim with a sealing lip and having affixed to an exterior surface, an envelope containing a test strip;
the body further comprising raised portions formed on a bottom of the container, the raised portions adapted to mate with cooperating features formed on the bottom of a cat litter box;
a label affixed to an exterior surface, the lid label having printed on it information pertaining to the interpretation of the test strip; and
a lid which seals the container.

13. The container of claim 12, further comprising:
a pre-packaged charge of cat litter in the container.

14. (New) The container of claim 2, wherein:
the cat litter box is a partitioned cat litter box.

15. (New) The container of claim 1, wherein:
the body is transparent or translucent.

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